

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2187

IN THE MATTER OF:

Served January 26, 1981

Application of INTERNATIONAL	)	Case No. AP-80-26
LIMOUSINE SERVICE, INC., for a	)	
Certificate of Public Convenience	)	
and Necessity to Perform Charter	)	
Operations Between Points in the	)	
Metropolitan District	)	

By application filed September 30, 1980, International Limousine Service, Inc., seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact to transport passengers, in charter operations, as follows:

To operate mini buses and vans on a charter "for-hire" basis on an as-needed basis as directed by the (charterer) to all points within the Metropolitan area, including such operations as limousine service, sightseeing, hotel transfers, convention transportation, airport shuttle to pre-determined destinations and on pre-determined schedules, weddings, embassies, social functions.

Pursuant to Order No. 2149, served October 6, 1980, and incorporated by reference herein, public hearings were held on November 19, 20 and 24, 1980.

The application initially was opposed by Executive Limousine Service, Inc. (Executive), Beltway Limousine Service, Inc. (Beltway), Atwood's Transport Lines, Inc. (Atwood's), and Airport Limo, Inc. The Federal Aviation Administration, Metropolitan Washington Airports (FAA) (proprietors of Washington National and Dulles International Airports) timely gave notice of its desire to be heard at the hearing. In addition, the Taxicab Industry Group (TIG) petitioned the Commission for leave to intervene in the proceeding, pursuant to Commission Rule No. 16. The petition was granted by the administrative law judge at the hearing. Two taxicab drivers, stating that they represent the Independent Cab Driver's Association of Washington, D. C., and the Fraternal Order of Taxi Driver Owners, Inc., sought leave to intervene at the hearing. The request was denied by the administrative law judge inasmuch as the interests of the taxicab operators would be maintained by TIG.

Atwood's withdrew its opposition to the application upon International's restrictive amendment limiting the charter operations to service in vehicles accommodating no more than 20 passengers (not including the driver) and restricted against using more than one vehicle for the same group at the same time. International Limousine further limited its application to the extent that all airport transfers would be restricted to transfer groups having more than 11 passengers, not including the driver, at which point Airport Limo withdrew its opposition. The restrictive amendments are further considered below in the Discussion and Conclusions portion of this order.

Preliminarily, we note that applicant has been found unfit to receive temporary authority in Case No. AP-80-22 for the reasons set forth in Order No. 2168, served November 24, 1980. The entire record in Case No. AP-80-22 with respect to the issue of fitness, including Order No. 2168, has been incorporated into Case No. AP-80-26. International Limousine was ordered to cease and desist from providing any service subject to regulation by the Commission unless and until appropriate authority therefor is issued by the Commission.

The president of International testified that, as pertinent here, his company operates 10 vans (maximum capacity of 14 passengers), one 17-passenger vehicle equipped with an hydraulic lift and four 20-passenger mini-buses. The company has a full-time mechanic and employs drivers and tour guides fluent in French, Spanish, German and Italian. In addition, International employs part-time personnel who are fluent in Japanese and Chinese, according to the witness. Admitting to insufficient past measures to ensure compliance with Commission orders, rules and regulations, the witness stated that International has retained the services of a second law firm to perform the following services in conjunction with its original attorney:

- a) Investigate and analyze all of the transportation services performed by or proposed by International Limousine Service, Inc., and to ascertain all of the requirements of the Washington Metropolitan Area Transit Regulation Compact and the Rules and Regulations of the Washington Metropolitan Area Transit Commission, and to see that all the necessary documents and papers are filed, all the certifications, licenses, and approvals are granted and the compact and the rules and regulations are complied with in the performance of the transportation services.
- b) For the next 12 months conduct monthly investigations of all the transportation

services being provided by International Limousine Service, Inc., at the time of the investigation and assure that the requirements of the Compact, the Rules and Regulations are being complied with, in respect to all of the transportation services.

- c) Analyze reports from Mr. Fogliarino [applicant's president] to Mr. Aulette [the original attorney] and to this office of every new contract or transportation service undertaken by International Limousine Service, Inc., as soon as the contract or service is proposed or initiated.
- d) Alper, Schoene, Horkan and Mann [the second law firm] will report to the Commission on behalf of International Limousine Service, Inc., each quarter furnishing such information as is directed by the Commission including but not limited to a list of all revenue vehicles being operated by International Limousine Service, Inc., a financial statement of the transportation operations of International Limousine Service, Inc., a statement of each contract under which International Limousine Service, Inc., is providing transportation services, and a statement of each type of transportation service being furnished by International Limousine Service, Inc., showing the dollar volumes of income received from the service and the vehicles being used in the performance of the service.
- e) Messrs. Aulette and Alper, Schoene, Horkan and Mann will cooperate in preparation of the necessary petitions and filings for certifications and authorizations required by the Commission.

He also asserted an increased familiarity with the Compact and Commission rules and regulations. Applicant's president sponsored an exhibit showing cancelled work orders for the period after applicant was directed to cease operations and inquiries received after the cessation of service. The company is still providing limousine service in operations not regulated by the Commission.

On cross-examination applicant's president stated that two of its 20-passenger vehicles are being used by the United States Department of Agriculture pursuant to a purchase order agreement with drivers who are former International Limousine employees but now are on the payroll of the Agriculture Department. Similarly, vehicles are being used by the United States Department of Health, Education and Welfare pursuant to a purchase order contract, as well as the Equal Employment Opportunity Commission. He explained communications with the law firm retained to advise him on Commission matters and described in detail the work orders that were cancelled after International was directed to cease operations. The description indicated that many of the inquiries and some of the cancelled orders concerned transportation outside the jurisdiction of the Commission.

Applicant's executive secretary and bookkeeper testified that she maintains the company's business records that are forwarded monthly to a data processing center which prepares monthly financial statements. She explained the basis used for future income projections and generally described the procedure for recording company revenue and expenses.

The certified public accountant serving International testified with respect to applicant's financial data, including a projected income statement, and an annual balance sheet and statement of income. He stated that the monthly statements generated by the data processing center are adjusted when preparing an annual statement, especially for items such as depreciation which were not included in the monthly statements. As a result they differ significantly from the true financial position of the company. He also explained the method used and assumptions made in preparing a projected income statement. The witness had no independent information on which to base an allocation of revenue between limousine and van services.

In support of the application three representatives of New York City travel agencies testified at the hearing. The first witness stated that about 90 percent of his business concerns foreign visitors, some of whom are interested in visiting Washington, D. C. He explained that for large groups coming to Washington, D. C., he hires buses and local multilingual tour guides but that the ability to have applicant's multilingual drivers available for smaller groups obviates the extra expense for an additional tour guide and frees an extra seat for a passenger. The availability of 20-passenger vehicles allows him to accommodate larger groups without having to hire a bus. The service is primarily limited to one-day tours of Washington, D. C., for groups established by tour operators and wholesalers in Europe. In the last few months the witness stated he had one group of eight or nine people that he booked to Washington, D. C.

The other two witnesses are employed by "receptive" travel agencies which work in conjunction with European travel agencies

establishing tours overseas. The receptive agents arrange travel, sightseeing and transfer services in the United States. These witnesses generally stated that they have found applicant's service satisfactory, find the availability of 20-passenger vehicles potentially helpful and find the use of multilingual drivers helpful because of their foreign clientele. They would use applicant's service primarily for airport transfers and local sightseeing. The witnesses expressed familiarity with a local bus company that they use for larger groups but are not too familiar with local carriers maintaining smaller vehicles. They stated they could use other certificated carriers with the addition of a multilingual guide. One of the witnesses estimated using International's services between seven and ten times over the last two years. The other witness opined that within the last nine months she had four or five groups (of between 10 and 20 persons) traveling in Washington, D. C., using applicant's services. Both witnesses stated that they were recently informed by applicant that it could not provide transportation service in vehicles other than limousines.

Applicant's attorney testified with respect to advice rendered to International since issuance of the Commission cease and desist directive, specifically regarding requests for service, and to discussions held with the law firm hired to analyze and investigate International's operations concerning controls and future applications for authority.

A representative of Washington Whirl-Around, Inc., a local conference management and convention planning firm, testified that she has used applicant's service in the past with satisfactory results. She has used the services of other carriers, including protestant Beltway, and, when needed, has also hired a multilingual guide. The witness stated that the majority of service requirements are for motor coaches, with most of the balance served by limousines and a small percentage by mini-buses.

A representative of Guide Service of Washington, Inc., stated that the company primarily puts licensed tour guides (English-speaking and multilingual) on motor coaches, coming to Washington, D. C., from outside the metropolitan area. In addition, the company makes travel arrangements for groups in Washington, D. C., and has used International's services for airport transfers and sightseeing service. She has had satisfactory service from applicant and has used 20-passenger vehicles for groups comprised of 15-20 persons. The cost of a mini-bus is significantly less than the cost of a motor coach (approximately 45-passenger capacity) according to the witness. In the summer of 1980 she hired the 20-passenger vehicle on one occasion, though she stated her interest in those vehicles is based on the number of inquiries received.

An advance man for President Reagan's staff testified that during the summer of 1980 he was responsible for arranging and

coordinating transportation between temporary headquarters in Middleburg, Va., and Dulles International Airport and Washington, D. C. On short notice he contacted International Limousine and contracted for use of 20-passenger vehicles, after calling a number of carriers to find suitable equipment. He was satisfied with applicant's service and would use it again if needed.

A priest responsible for coordinating travel arrangements for the French School in Washington, D. C., testified that he has used applicant's mini-bus services for the past two years, supplementing the school's buses, about three times a month from October through May for trips in the metropolitan area to museums and the theater. The use of multilingual drivers is helpful because the persons transported usually are European children.

A member of Senator Kennedy's staff responsible for making transportation arrangements testified that International Limousine has provided shuttle service for large groups on several occasions between points in Washington, D. C., and Virginia and between points solely in Virginia. Service has been performed about once a month and the 20-passenger buses would be used in the future if a certificate is granted, according to the witness. Although the witness sought to arrange transportation for two functions in late September and early October he was informed by International that it could not provide service because of the cease and desist order. 1/

A representative of Courtesy Associates located in Washington, D. C., stated that she arranges transfer and sightseeing transportation for conferences and for the National Institutes of Health. Applicant's services have been retained for transportation by limousine, van and 20-passenger mini-bus. The maximum size group is about 20 passengers, but smaller delegations use mini-buses and are able to carry their luggage with them in the larger vehicles. She estimated that her clients' use of applicant's service occurs about once every two months, and overall company use about once a month. The company uses other limousine companies in addition to International.

An officer of protestant Beltway Limousine testified that the carrier operates 56 vehicles, employs 75 people, and provides service for charter groups and (under contracts) for government agencies. From 1978 to 1979 the company experienced a 50 percent drop in profits ascribed by the witness primarily to Commission adoption of Regulation No. 70 which eases market entry for contract carriage, and to the Small Business Administration "8-A" program which fosters growth of minority-controlled businesses. Charter work constitutes about 20 percent of

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1/ The Commission does not have jurisdiction over transportation between points solely within Virginia. Compact, Title II, Article XII, Section 1(b).

the carrier's business which has suffered a decrease of about 25 percent this year due to the state of the economy and the fact that people are not traveling as much. The witness stated that if applicant were granted a certificate of public convenience and necessity, Beltway would have to cut back on benefits, excess insurance and perhaps vehicles maintained. He testified that although the company has bilingual drivers, it had had only one request for such service in 1979. He also explained that Beltway has two 19-passenger vehicles previously operated under a government contract which have been idle since the expiration of that contract. Because of the limited number of requests for such vehicles, the carrier has not sought authority to use these vehicles to perform charter service. <sup>2/</sup> In 1980, the company sold six units of equipment and laid off seven drivers.

A secretary employed by Beltway testified that she chartered a vehicle from International Limousine on September 21, 1980, to provide sightseeing service between points in the Metropolitan District. The witness stated that she requested a lectured service but did not see a tour guide badge on the driver.

An officer of protestant Executive Limousine explained that the carrier provides special operations between Dulles International Airport and specific locations as well as charter operations between points in the Metropolitan District restricted to operations in vehicles with a maximum seating capacity of 15 passengers. The company operates 12 units of equipment including eight vans and has six full-time employees. The loss of a large contract on or about August 1, 1980, has sidelined much of the carrier's equipment. As a result, Executive has embarked on a program to increase charter service. The company also provides contract services pursuant to Regulation No. 70. The special operations are not profitable standing alone. The witness testified that October is normally one of the heavier months for charter work and that during October 1980, shortly after applicant ceased operations, there was a large number of charter trips scheduled. On cross-examination the witness admitted that although June is usually a lightly-traveled month, the company had approximately the same number of trips scheduled in June 1980 as October 1980.

A representative of the Taxi Industry Group stated that the organization is composed of many of the taxicab companies and associations as well as individual drivers in the District of Columbia. His opposition to the application is based on the increased competition

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2/ Beltway's Certificate of Public Convenience and Necessity No. 25 authorizes charter operations between points in the Metropolitan District restricted to vehicles with a seating capacity of 15 passengers or less.

to taxicab drivers and companies that would result from a grant of authority. He testified that a passenger can request foreign-language speaking drivers, if desired, and that several taxicabs could be used for transporting larger groups of passengers. The drivers have experienced a decrease in demand for service to and from the airports and hotels in recent years. The witness stated that hourly taxicab rates, even for groups requiring a few taxicabs, would still be more economical than using limousine service.

The FAA did not present any testimony at the hearing but did subsequently submit an affidavit for filing in the record, presenting its position on the application. Essentially, the FAA urges that careful consideration be given to the effect of any Commission decision upon the service available to and from Dulles and National Airports.

#### DISCUSSION AND CONCLUSIONS

The Compact, Title II, Article XII, Section 4(b), provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds ". . . that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied."

The Commission finds that International Limousine has sustained its burden of proof regarding the matter of need for service to the extent described below. A number of witnesses have testified to the need for applicant's service specifically indicating an insufficient availability of equipment larger than 15-passenger vans but smaller than motor coaches. No other carrier both holds charter authority for and operates vehicles in the 20-passenger range as contemplated by applicant. Witnesses testifying at the hearing stressed the advantage of this type of equipment, which would provide for groups in excess of 14 passengers (but not more than 20 passengers) without the expense of hiring two vans or an excessively large motor coach. International Limousine, to this extent, has apparently identified a segment of the population not now being served. The use of multilingual drivers is certainly an added factor in applicant's quest to serve the public. The witnesses representing New York City travel agencies, among others, emphasized the advantages of using multilingual drivers without having to hire guides. Although, clearly, a charter group could hire a multilingual guide independent of the carrier's staff, the service International proposes to offer meets stated needs according to testimony elicited at the public hearing. The fact that protestant Beltway cited a lack of inquiries regarding its 19-passenger vehicles or use of multilingual driver-guides emphasizes International's concentration on a specific market.



Protestants Beltway and Executive asserted that decreasing profits in 1980 have been caused primarily by the Commission's adoption of Regulation No. 70 easing market entry for new carriers as well as a downturn of the economy and loss of charter contracts. These carriers would not suffer from a grant of authority to operate mini-buses inasmuch as they are not engaged in that area of endeavor. Increased competition in the van market (serving groups of 9 to 14 passengers) at this point in time, however, would be both inconsistent with the evidence of record and our general policy of encouraging a strong and stable carrier industry able to provide the public with quality transportation at just and reasonable fares.

Despite the inconsistencies of Executive's evidence regarding the effect of International's cessation of illegal operations, the record is clear that existing demand for chartered vans is less than it could and should be. In part, this is due to economic forces largely beyond the control of the carrier industry and this Commission. In some measure, it is also due to a lack of aggressive and innovative marketing efforts to expand the charter contract market. In adopting Regulation No. 70, we eased entry requirement procedures for new charter contract carriers to encourage their efforts to expand that sector of the transportation market. To a large extent, this expansion has not proceeded as anticipated. The result of this phenomenon is that increased competition for previously identified contracts has diluted the market share enjoyed by established carriers to the point where their continued economic viability depends upon their expansion of general charter business. Both Beltway and Executive have been forced to lay off employees and Beltway has sold some of its vans. The testimony of the witness from the Taxicab Industry Group indicates that ridership is below normal in that sector of the transportation industry.

We are also of the view that the testimony of the public witnesses fails to establish a need for another carrier serving groups of 9 to 14 passengers. Most witnesses were familiar with Beltway and the most serious complaint about that carrier was one instance of late arrival. Generally, Executive's service had not been tried. No serious claim was made (except for vehicle size limitations) that these carriers could not meet the transportation needs of the supporting firms. Hence, we find that the application, to the extent that service in vans is proposed, should be denied.

One of the proposed restrictive amendments to the application requires that all airport transfers both to and from Washington National and Dulles International Airports have at least 12 passengers in the charter groups. This restriction, however, is administratively undesirable and virtually impossible for either the carrier or the Commission to enforce due to the often uncertain composition of charter groups. In our view, authorization of service in only those vehicles with a seating capacity for 16 to 21 passengers (including the driver)

plus a restriction allowing airport operations only in connection with ". . . a prearranged charter movement by the same party between at least two other points within the Metropolitan District", 3/ would adequately protect the operations of Airport Limo as urged by that protestant.

The other proposed restrictive amendment precludes the use of more than one 20-passenger vehicle from serving the same group at the same time, essentially preventing the substitution of two 20-passenger vehicles for one motor coach. Practically speaking, such use would be unlikely because of the cost involved. Furthermore, the restriction is compatible with the type of service International seeks to provide.

It is important to note that these restrictions do not prevent applicant from performing contract work with vans or two or more 20-passenger vehicles if authority therefor is separately granted pursuant to Commission Regulation No. 70. However, because no need for such service was shown in this case, no such grant of authority will be made herein.

With respect to the issue of fitness, International has been found not fit to operate in Case No. AP-80-22. See Order No. 2168. In that proceeding, the Commission stated that:

We approve, in passing, the efforts outlined for insuring future compliance, and adherence to such efforts will weigh heavily in future determinations regarding International's fitness. It will be incumbent upon applicant in any future cases, affirmatively to demonstrate its compliance efforts and the ability of its operating personnel to understand and comply with the mandates of the Compact and our rules, regulations and orders thereunder.

As a step towards insuring future compliance, International has adopted a program to investigate and analyze its operations on a continuing basis through use of an outside law firm in addition to the work of its principal attorney. There is ample testimony that applicant ceased operations when directed to do so by the Commission

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3/ See Certificate No. 18 of protestant Executive and Certificate No. 25 of protestant Beltway.

and informed its customers that it could not provide service pursuant to orders previously scheduled. International's president demonstrated an increased familiarity with the Compact and the company's principal attorney testified as to advice rendered to International since issuance of the cease and desist order and to discussions held with the law firm retained to insure compliance with Commission orders, rules and regulations and Compact requirements.

The evidence shows that International has abided by the directive to cease and desist operations subject to Commission jurisdiction and has demonstrated efforts to comply with the Compact and Commission rules and regulations. The Commission finds the carrier fit to conduct the service authorized herein. However, International will be required to submit quarterly reports to the Commission setting forth 1) all revenue from authorized charter work, limousine operations, any contracts being performed and all other sources, 2) a statement describing each service being provided, including points of origin and destination and the group using the service, 3) a statement describing each contract, if any, pursuant to which service is being provided, 4) quarterly financial statements (both a balance sheet and income statement) and 5) a list of vehicles being used for transportation service. The Commission specifically reserves jurisdiction to reopen this proceeding or to institute a new proceeding for a redetermination of International's fitness, compliance, financial or operational, to conduct the service authorized herein.

**THEREFORE, IT IS ORDERED:**

1. That International Limousine Service, Inc., is hereby granted authority to transport passengers and their baggage, in the same vehicle with passengers, in charter operations, over irregular routes, between points in the Metropolitan District restricted (a) to transportation in vehicles with a manufacturer's designed seating capacity for 16 to 21 passengers (including the driver), (b) against transportation to and from Dulles International Airport and Washington National Airport except as performed in connection with a prearranged charter movement by the same party between at least two other points in the Metropolitan District, (c) against the use of more than one vehicle in any one day for transporting the same group, (d) against transportation described in Commission Regulation No. 70-01, and (e) against operations solely between points in Virginia.

2. That the above-described application, except to the extent granted herein, is hereby denied.

3. That International Limousine Service, Inc., is hereby directed to file (a) two copies of its WMATC tariff for the service authorized herein as required by Commission Regulation No. 55, such tariff to be effective upon acceptance by the Executive Director, (b) a

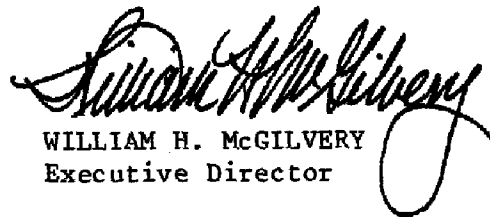
certificate of insurance as required by Commission Regulation No. 62 and (c) an affidavit of compliance with Commission Regulation No. 68 governing identification of motor vehicles, for which purpose applicant is reassigned WMATC No. 38.

4. That upon compliance by applicant with the directives set forth in paragraph 3 above, an appropriate certificate of public convenience and necessity will be issued.

5. That International Limousine Service, Inc., is hereby directed to file with the Commission quarterly reports containing (1) a statement detailing revenue from all transportation services, (2) a statement describing each service rendered, (3) a statement describing each contract under which service is being provided, (4) quarterly financial statements and (5) a list of all revenue vehicles, all as more fully described herein, and to include all operations for which authority was held during the report period, the first such filing for the period January 1, 1981, through March 31, 1981, to be due April 30, 1981, and subsequent filings to be due 30 days following the end of each succeeding calendar quarter unless and until otherwise ordered by the Commission.

6. That in the event International Limousine Service, Inc., fails to comply with the directives set forth above in paragraph 3 within 30 days, or such time as may be authorized by the Commission, the grant of authority made herein will be considered void and the application will stand denied in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER, SHANNON AND CLEMENT:

  
WILLIAM H. MCGILVERY  
Executive Director